

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 96-80335

Honorable Victoria A. Roberts

v.

CARLOS UNDRY HICKS,

Defendant.

_____ /

ORDER DENYING PETITIONER A CERTIFICATE OF APPEALABILITY

On June 29, 2018, the Court entered an order denying Carlos Undry Hicks's 28 U.S.C. § 2255 habeas petition, finding that the petition was "easily resolved on the merits." Hicks timely filed a notice of appeal.

Hicks may not proceed on appeal unless he first obtains a certificate of appealability from this Court or the Court of Appeals. 28 U.S.C. § 2253(c)(1); Fed. R. App. Proc. 22(b).

A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a court rejects a habeas claim on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the court's assessment of the constitutional claim debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). "A petitioner satisfies this standard by demonstrating that . . . jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The Court does not

conduct a full merits review when applying this standard; it must limit its examination to a threshold inquiry into the underlying merit of the petitioner's claims. *Id.* at 336-37.

Hicks fails to make a substantial showing that he was denied a constitutional right. A certificate of appealability is not warranted; the Court declines to issue one. *Id.*

Additionally, the Court finds that Hicks should not be granted leave to proceed *in forma pauperis* on appeal; any appeal would be frivolous. See Fed. R. App. P. 24(a).

IT IS ORDERED.

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: September 28, 2018